



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

October 21, 2013

2013 Interim No. 8

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Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

October 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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Tuesday, October 22, 2013

Mental Health and Disability Services Redesign Fiscal Viability Study Committee

9:30 a.m., Committee Room 116, Statehouse

Wednesday, October 23, 2013

Public Retirement Systems Committee

9:30 a.m., Committee Room 116, Statehouse

Monday, October 28, 2013

All-terrain and Off-road Utility Vehicle Study Committee

10:00 a.m., Committee Room 116, Statehouse

Stray Electric Current and Agriculture Study Committee

10:00 a.m., Room 103, Supreme Court Chamber, Statehouse

Tuesday, October 29, 2013

Medical Malpractice Study Committee

Meeting canceled. See briefing page for directions for providing written information.

Tuesday, November 5, 2013

Administrative Costs in Higher Education Study Committee

10:00 a.m., Committee Room 116, Statehouse

Wednesday, November 6, and Thursday, November 7, 2013

Emergency Medical Services Study Committee

10:00 a.m., Wednesday; 9:00 a.m. Thursday, Committee Room 116, Statehouse

Thursday, November 7, 2013

Legislative Fiscal Committee

9:30 a.m.-3:00 p.m., Iowa Central Community College East Campus, Fort Dodge, IA

Friday, November 8, 2013

Administrative Rules Review Committee

9:30 a.m., Committee Room 116, Statehouse

November 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Mental Health and Disability Services Redesign Fiscal Viability Study Committee

Temporary Co-chairperson: Senator Joe Bolkcom

Temporary Co-chairperson: Representative David Heaton

Location: Room 116, Statehouse

Date & Time: Tuesday, October 22, 2013, 9:30 a.m.

Contact Persons: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Amber DeSmet, Legal Services, (515) 281-3745.

Tentative Agenda: Review status of redesign.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=849>

Public Retirement Systems Committee

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Wednesday, October 23, 2013, 9:30 a.m.

Contact Persons: Ed Cook, Legal Services, (515) 281-3994; Andrew Ward, Legal Services, (515) 725-2251; Rick Nelson, Legal Services, (515) 242-5822.

Tentative Agenda: Presentations on accounting standards for public retirement systems and the Municipal Fire and Police Retirement System of Iowa (MFPRSI), also known as the 411 system.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=57>

All-terrain and Off-road Utility Vehicle Study Committee

Temporary Co-chairperson: Senator Chris Brase

Temporary Co-chairperson: Representative Brian Moore

Location: Room 116, Statehouse

Date & Time: Monday, October 28, 2013, 10:00 a.m.

Contact Persons: Ann Ver Heul, Legal Services, (515) 281-3837; Mike Mertens, Legal Services, (515) 281-3444; Diane Ackerman, Legal Services, (515) 281-7257.

Tentative Agenda: Presentations focusing on issues raised in HF 619, introduced in 2013, pertaining to the use of ATVs/Off-Road utility vehicles on public roads.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=925>

Stray Electric Current and Agriculture Study Committee

Temporary Co-chairperson: Senator Thomas Courtney

Temporary Co-chairperson: Representative Peter Cownie

Location: Room 103, Supreme Court Chamber, Statehouse

Date & Time: Monday, October 28, 2013, 10:00 a.m.

Contact Persons: Rick Nelson, Legal Services, (515) 242-5822; Mike Mertens, Legal Services, (515) 281-3444; Doug Adkisson, Legal Services, (515) 281-3884.

Tentative Agenda: Presentations and discussion of stray electric current and agriculture and the issues relating to the topic.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=930>

Administrative Costs in Higher Education Study Committee

Temporary Co-chairperson: Senator Rita Hart

Temporary Co-chairperson: Representative Greg Forristall

Location: Room 116, Statehouse

Date & Time: Tuesday, November 5, 2013, 10:00 a.m.

Contact Persons: Kathy Hanlon, Legal Services, (515) 281-3847; Jack Ewing, Legal Services, (515) 281-6048; Michael Duster, Legal Services, (515) 281-4800.

Agenda: Presentations concerning administrative costs and mandatory fees in higher education from public and private post secondary educational institutions.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=927>

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

MEDICAL MALPRACTICE INTERIM COMMITTEE

October 29, 2013—Meeting canceled

Temporary Co-chairpersons Senator Hogg and Representative Baltimore have agreed that no formal meeting of the Medical Malpractice Study Committee will be held this interim. Instead, they have requested that information be submitted from interested groups or persons relating to the committee's charge, which is to consider standards and potential options for certificate-of-merit affidavits by plaintiffs and defendants in medical malpractice actions and limitations on the number of expert witnesses that may be called by both plaintiffs and defendants in such actions.

Submitted documents should be sent electronically to Rachele Hjelmaas at Rachele.Hjelmaas@legis.iowa.gov no later than Tuesday, October 29. The submitted documents will be posted on the committee's legislative website at <https://www.legis.iowa.gov/Schedules/committeeDocs.aspx?GA=85&CID=924> (documents).

Temporary Co-chairpersons Senator Hogg and Representative Baltimore encourage all committee members to review and give careful consideration to all submitted documents for possible legislation during the 2014 Legislative Session.

ADMINISTRATIVE RULES REVIEW COMMITTEE

October 7-8, 2013

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Wally Horn

EMERGENCY RULEMAKING REQUEST, 2013 Iowa Acts, HF 586, provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee (ARRC). Under this new procedure, the committee reviews requests by agencies to adopt rules without notice at its monthly meeting or at special meetings if necessary.

Iowa Finance Authority. ARRC gave pre-approval to an emergency amendment to revise portions of the following Iowa Finance Authority rules filing: Military Service Member Home Ownership Assistance Program—Home Purchase Financing, 27.3(2) Filed, ARC 0827C, 07/10/13 IAB.

EDUCATIONAL EXAMINERS BOARD, *Teaching Endorsements for Health, Music, and Physical Education*, ARC 0986C, 09/04/13 IAB, ADOPTED.

Background. These changes to the endorsements for teaching of health, music, and physical education were adopted following reviews of the current endorsement requirements by committees composed of practicing educators, presidents of the relevant professional organizations, and representatives of institutions of higher education.

A health endorsement will now require a current certificate of CPR and will include greater flexibility in obtaining a health endorsement or Class B license. A music endorsement will require a methods course in each of general, choral, and instrumental music. A physical education endorsement will require coursework in personal wellness and a current certificate of CPR. Various terminology changes are made as well.

Commentary. Discussion centered around a public comment asserting that the additional coursework required for the music endorsement would impose a significant burden on those seeking the endorsement and would make it more difficult for rural schools to find qualified music teachers. A board representative noted some disagreement in the music community over whether the new requirement is appropriate. In response to a question from a committee member, the representative clarified that this requirement would only apply to eligibility for the music endorsement; it would not affect program graduation requirements. A motion to delay the effective date of the rulemaking for 70 days did not carry.

Action. The committee took no action.

EDUCATIONAL EXAMINERS BOARD, *Prohibited Conduct Between Licensees and Former Students*, ARC 0992C, 09/04/13 IAB, NOTICE.

Background. The proposed amendment would prohibit romantic or sexual relationships between licensees and former students for 90 days following the student's last date of enrollment, if the licensee and the student previously had a direct and supervisory relationship. The proposed amendment adds an additional ethics violation specifically applicable to students no longer enrolled in a school district. In response to feedback from the committee on a prior proposal on this subject, the board has reduced the number of days in the proposed amendment from 180 to 90, provided a statutory cross reference defining "sexual conduct," and narrowed the scope of prohibited conduct.

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Administrative Rules Review continued from Page 3)

Commentary. Some committee members questioned the board's rationale for regulating the conduct of consenting adults after a person is no longer a student, and whether the board had adequately responded to the committee's prior feedback. A board representative noted that an act of the conduct in question within 30 days following a student's last date of enrollment is already a criminal offense. The representative explained that the rulemaking is intended to respond to licensees engaging in grooming the prohibited behavior with students. A committee member noted that this rulemaking could apply to students who drop out of school at age 16.

Action. The committee took no action.

MEDICINE BOARD, *Standards of Practice—Physicians Who Prescribe or Administer Abortion-inducing Drugs*, ARC 1034C, 10/02/13 IAB, ADOPTED.

Background. This adopted amendment establishes the standards of practice for physicians who prescribe or administer abortion-inducing drugs. The amendment provides that a physician shall not induce an abortion by providing an abortion-inducing drug unless the physician has first performed a physical examination of the woman to determine, and document in the woman's medical record, the gestational age and intrauterine location of the pregnancy. A physician is now required to be physically present with a woman when providing an abortion-inducing drug to the woman. A physician who provides an abortion-inducing drug to a woman is now required to schedule a follow-up appointment with the woman at the same facility where the abortion-inducing drug was provided.

Commentary. Public comments in opposition to the rulemaking cited a lack of stakeholder involvement in the rule-making process and potential negative impacts on patients and the practice of telemedicine in general. They also questioned whether the board had pursued this rulemaking with inappropriate haste and without sufficient study.

No public comments in support of the rulemaking were heard by the committee.

A motion to delay the effective date of the rulemaking until the adjournment of the next session of the General Assembly did not carry.

Action. The committee took no action.

IOWA FINANCE AUTHORITY (IFA), *Home Purchase Financing*, ARC 0827C, 07/10/13 IAB, ADOPTED-UNDER 70-DAY DELAY.

Background. The Military Service Member Home Ownership Assistance Program provides veterans with a \$5,000 grant that may be used toward entry cost assistance, such as a down payment and closing cost assistance on a qualifying home purchase. Amendments to subrule 27.3(2) relate to home purchase financing under the program. At the August meeting, the committee voted to impose a 70-day delay on this subrule.

Commentary. The subrule requires that the applicant utilize one of the authority's home buyer mortgage programs, eliminating a current option allowing alternative financing if it is of lower cost. At the August meeting, committee members stated that the applicant should be free to choose whatever financing provided the best cost, and imposed a 70-day delay on this subrule.

At the committee's October meeting, IFA representatives offered amendments to subrule 27.3(2), broadening the use of alternative financing. It was noted that some statutory limitations still apply and would require legislative action.

Action. Emergency rulemaking was approved.

INSPECTIONS AND APPEALS DEPARTMENT, *Informal Process: Citation Appeals*, ARC 0967C, 10/02/13 IAB, ADOPTED.

Background. Iowa Code §135C.42 provides a process for an informal conference on a contested citation issued to a care facility or assisted living program. 2013 Iowa Acts, SF 394, revises this process to require that an independent reviewer hold the informal conference rather than a representative of the department.

Commentary. At issue is the finality of the decision of the independent reviewer. Iowa Code §135C.42(1), as amended by SF 394, in part provides that the care facility may appeal an adverse decision by the independent reviewer, but is silent on whether the department has a similar right. The adopted rule does not provide for an appeal by the department. In response to questioning, department representatives noted these state hearings are held in conjunction with a federal Centers for Medicare and Medicaid Services (CMS) action, which could be appealed through the federal system.

Action. The committee took no action.

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(Administrative Rules Review continued from Page 4)

HUMAN SERVICES DEPARTMENT, *Care Facilities: Allowable Costs for Medicaid Reimbursement*, ARC 0994C, 09/04/13 IAB, ADOPTED.

Background. Care facilities file cost reports with the department; these reports are used to determine the reimbursement rate for Medicaid payments.

Commentary. In part this filing allows the cost of association memberships into the calculation for reimbursable costs. One speaker contended this cost should not be part of the cost calculation, stating that association dues in part are used for lobbying purposes on both the state and federal level, and for other purposes that do not benefit the facility residents. Agency representatives responded that the final rule provides that reasonable legal, accounting, consulting, and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care.

Action. The committee took no action.

PHARMACY BOARD, *Drug Product Selection*, ARC 1041C, 10/02/13 IAB, NOTICE.

Background. The proposed amendments add to the information that must be communicated to a pharmacist receiving a prescription transfer from another pharmacy by adding any special directions, restrictions, or notations included by the prescriber on the original prescription including but not limited to restrictions relating to drug product selection or substitution. The amendments also add a new rule establishing requirements for drug product selection and “do not substitute” restrictions.

Commentary. A board representative explained that the proposed language on substitutions is intended to clarify state law that has been in effect for many years; it contains nonexclusive guidelines for how a prescriber may indicate that a substitution cannot be made. The representative noted that this rule would not apply to prescriptions covered under Medicaid, where substitution is mandatory. The representative also explained that while physicians have been supportive of the proposal, pharmacists have expressed concern because they are contractually obligated to absorb any cost differential between an original prescription and a substitution.

Supporters of the proposal cited the effect of substitute prescriptions on epilepsy. They stated that patients need to remain on their original prescriptions in order to remain free of seizures; it is difficult to find a medication that works, and substitutes are less effective and can cause seizures to return. They believe the proposal resolves their concerns.

Another stakeholder echoed the board’s comment on the financial impact on pharmacists of cost differentials between original prescriptions and substitutions; pharmacists are required by contract to absorb these costs, which can represent a significant burden. She stated that additional language is necessary to protect pharmacies from these costs, and that stakeholders would work on a compromise. A task force has developed a possible solution to the problem. The board representative explained that this issue is statutory in nature and will require legislation to resolve.

Action. The committee took no action.

PUBLIC HEALTH DEPARTMENT, *Vital Records: Temporary Fee Increase*, ARC 1074C, 10/02/13 IAB, ADOPTED.

Background. The department implements a time-limited fee increase for specific vital records. This increase will finance the development and implementation of the Iowa vital events system, including the electronic registration and issuance of vital records and new events and the conversion of historical records. The fee increase is estimated to generate \$6.35 million through July 1, 2019, to be used for the software and for the incorporation of the historical records into a single system.

Commentary. Committee members expressed concern over the refund policy set out in the fee structure. The policy provides that any overpayment of less than \$20 received for the copying of or search for vital records, or for the preparation or amending of a certificate, will not be refunded. Committee members felt this policy is excessive and unfair. Department representatives stated that the limitation was currently in the rules, since 1991, and noted the expense of ordering and issuing a refund check. Members felt the limitation should be reduced to a few dollars.

Action. The committee imposed a 70-day delay on item two only, relating to refunds.

TRANSPORTATION DEPARTMENT, *Traffic Cameras on Primary Road System*, ARC 1037C, 10/02/13 IAB, NOTICE.

Background. This proposed rulemaking sets the requirements, application procedures, and responsibilities in the use of automated traffic enforcement systems on the primary road system (Interstate, U.S., and state highways). These provisions apply only to local jurisdictions, which must obtain approval from the department prior to using an automated system on the primary road system. The department itself does not own, operate, or receive compensation for any

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(Administrative Rules Review continued from Page 5)

automated traffic enforcement system.

Commentary. Automated traffic enforcement systems are high-resolution cameras used to detect speed or stop light violations. Civil citations are issued to the registered owner of the vehicle. These systems are largely owned and operated by a contractor working on behalf of the local jurisdiction. The issuance of a citation is under the control of local authorities.

The department considers the location of these systems a public safety issue; under the rules the systems may be used only in areas with a documented high-crash or high-risk location in an area or intersection with a significant history of crashes attributed to red light running or speeding, or in a school zone.

Stakeholders contended that the standards for the approval and location of these are too vague, allowing the department too much discretion in the approval process. Some contended that the decision should be based on local control and local circumstances. Representatives from cities and counties also opposed portions of the rules, noting that the annual review requirements made it difficult to contract for these systems. One city representative stated the city had entered into a five-year contract with the provider providing all hardware.

The question was raised whether these systems provide adequate due process. Local representatives stated there is a multi-step process. The contractor does the initial review, looking at individual recorded clips. Possible violations are forwarded to local authorities who determine whether a violation has occurred. The local authority makes the final decision on whether to issue a ticket. Motorists can contact the local authorities directly to discuss the circumstances, and judicial review is available.

Committee members expressed some concern, with some members noting that these systems seem to function as revenue raising devices.

Action. The committee took no action; additional review likely in January.

Next Meeting. The next regular committee meeting will be held in Committee Room 116, on Friday, November 8, 2013, beginning at 9:30 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=53>

STATE GOVERNMENT EFFICIENCY REVIEW COMMITTEE

October 9, 2013

Co-chairperson: Senator Jeff Danielson

Co-chairperson: Representative Guy Vander Linden

Overview. The State Government Efficiency Review Committee received testimony from various organizations and individuals concerning a variety of state and local government efficiency efforts and requests.

State Expenditures for Organizational Dues. Mr. Dave Reynolds, Senior Legislative Analyst, Fiscal Services Division, Legislative Services Agency (LSA), reviewed information regarding the state's expenditures for membership or organization dues. Mr. Reynolds noted that total dues expenditures over the past three fiscal years were \$2.14 million in FY 2010-2011, \$2.06 million in FY 2011-2012, and \$2.24 million in FY 2012-2013.

Information Technology Consolidation. Mr. Robert von Wolfradt, Chief Information Officer (CIO), reviewed legislation from the 2013 Legislative Session that consolidated information technology management and resources and established the independent Office of the Chief Information Officer separate from the Department of Administrative Services. The new agency is in the formative stages of organizational structuring and information technology consolidation efforts within the executive branch have currently been on a selective basis, utilizing voluntary Iowa Code chapter 28D agreements to consolidate information technology staff and resources where appropriate. Current information technology activities include implementing cloud-based e-mail, communications, and collaborative solutions, data center consolidation, infrastructure time reporting, web portal services, invitation to quality for web development, new service desk tools, improved information technology incident response, alignment of technology related contracts, information technology staff sharing using chapter 28D agreements, and a partnership with the state of Michigan for limited disaster recovery capabilities.

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(State Government Efficiency Review Committee continued from Page 6)

Human Resources Consolidation and Other Efficiency Measures. Ms. Michelle Minnehan, Chief Operating Officer, Department of Administrative Services-Human Resources Enterprise (DAS-HRE), discussed the provisions of Iowa Code §8A.402 and the broad authority it provides to DAS for human resources management related to employment, compensation, benefits, labor relations, and other issues. While legislation was proposed in 2013 to require human resources consolidation within the executive branch with an anticipated future cost savings of approximately \$3.4 million, the legislation that was enacted in 2013 provides for human resources consolidation as a voluntary initiative for agencies. As of the end of September 2013, 11 agencies with 3,700 employees have agreed to partner with DAS-HRE.

In assessing best practices in human resources management, an examination of the ratio between human resources personnel and employees served is utilized. The two types of human resources services, with differing target ratios, are technical and professional. In examining the effects of the consolidation with the 11 agencies, Ms. Minnehan noted that staffing levels have been reduced for both types of services but the agencies have had a positive response to the consolidation. In addition to reduced costs through personnel efficiencies, consolidated human resources management can have the effect of reduced human resources errors.

Department of Administrative Services Efficiency Efforts. Mr. Mike Carroll, Director, Department of Administrative Services, discussed how DAS works to make the government more efficient in IT and HR. Mr. Carroll then described several additional efficiency efforts. The efforts include increasing the use of telework and work from home, requiring employees to choose either employer provided cell phone or desk phone services, elimination of required reports, fleet restructuring and risk management relative to accidents and damages to state-owned vehicles, expansion of the purchasing card program, establishment of a separate central procurement enterprise within the department, and school bus cooperative purchasing.

Executive Branch Boards/Commissions. Mr. David Roederer, Director, Department of Management, discussed executive branch boards and commissions relating to the philosophy behind boards, types of boards, and challenges in appointing members to boards. Suggestions for legislative consideration include examination of the boards in the regular budget process, providing for a sunset date for boards, and continual review of boards as to how the public is served by that board and has the need for the board passed.

Local Government Efficiency Opportunities. Mr. Alan Kemp, Executive Director, Iowa League of Cities, and Ms. Linda Hinton, Government Relations Manager, Iowa State Association of Counties, addressed the committee relative to local government efficiencies and concerns. Issues identified by the presenters included infrastructure funding, pension and health care costs, newspaper publication of notices, certain city elections for vacancies, diversified funding options to recover costs, implementation flexibility when major policy changes are adopted, such as property tax reform and mental health redesign, state agency downsizing with reduced local offices, document storage requirements, such as manure management plans, and access to the Iowa Communications Network (ICN).

Committee Recommendations. The committee agreed to the following recommendations:

- Request that department heads seek input from their employees relating to current and new government efficiency efforts, and that the directors encourage employee input through the departments themselves or through the State Government Efficiency Review Committee's public comment Internet site.
- Request that department heads offer recommendations for the consolidation or elimination of boards and commissions within their department's purview, and that the department heads provide such recommendations to the committee and to each department's respective budget subcommittee.

LSA Contacts: Ed Cook, Legal Services, (515) 281-3994; Andrew Ward, Legal Services, (515) 725-2251; Rick Nelson, Legal Services, (515) 242-5822.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=540>

LEGAL UPDATES

Purpose. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

LEGAL UPDATE—CRUEL AND UNUSUAL PUNISHMENT—JUVENILE OFFENDERS

Filed by the Iowa Supreme Court

August 16, 2013

State of Iowa vs. Desirae Monique Pearson

No. 11-1214

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20130816/11-1214.pdf

Facts. On November 25, 2010, the defendants in this case, Desirae Pearson and Devon Lukinich, armed themselves with BB guns that looked like handguns and went on a robbery and burglary spree in Burlington, Iowa. At the time the offenses were committed, Pearson was 17 years and 3 months old, and Lukinich was 17 years old. During the first incident, the defendants knocked on a door in a residential neighborhood and when the occupant of the residence opened the door, Pearson pointed one of the BB guns at the occupant and announced that they were committing a robbery. The defendants entered the residence and proceeded to take various items. Later that same day, Lukinich entered another residence through an open window and opened the door to allow Pearson to enter. The elderly homeowner of the residence heard a noise and confronted the two defendants while they were in the process of stealing items. Both defendants opened their jackets to reveal the BB guns. The homeowner screamed and Lukinich pushed the homeowner backwards into a doorframe fracturing the homeowner's shoulder. The defendants fled the house but were caught by the police a short time later. The defendants were charged in adult court with robbery in the first degree and burglary in the first degree. Both offenses are punishable by 25 years in prison and are categorized as 70 percent sentences which require service of 70 percent of the 25-year-sentence in prison before becoming eligible for parole.

Procedure. Pearson was convicted of both robbery in the first degree and burglary in the first degree and was sentenced to serve 25 years in prison consecutively on both counts rather than concurrently on each count. In this type of sentence, service of two sentences that run consecutively in effect means the defendant must serve 70 percent of a 50 year (25 + 25) sentence or a 35-year (50 x 70 percent) sentence in prison before becoming eligible for parole. Pearson had a previous juvenile record that included assault and theft.

Pearson appealed the sentence and the case was assigned to the Court of Appeals. The Court of Appeals agreed with the findings of the district court and concluded that Pearson was nearly an adult, that she had a history of assaultive behavior, and that she ignored opportunities for rehabilitation. Pearson appealed the Court of Appeals decision and the Iowa Supreme Court (Court) granted further review.

Issue. Whether the sentence imposed violates the core principles relating to juvenile sentences established under the United States Supreme Court decision *Miller v. Alabama*, 305 U.S. 1043, and constitutes cruel and unusual punishment under the 8th Amendment to the United States Constitution and Article I, section 17 of the Iowa Constitution?

Holding. The Court held that the district court's sentence imposed in this case does violate the core principles relating to juvenile sentencing established under *Miller v. Alabama* and constitutes cruel and unusual punishment under the 8th Amendment to the United States Constitution and Article I, section 17 of the Iowa Constitution. The core principles under *Miller* require an individualized sentencing hearing to determine whether the juvenile could be eligible for parole prior to the expiration of any mandatory minimum sentence. The Court further stated that it should be a relatively rare occurrence for a juvenile to be sentenced to such a lengthy prison sentence without the possibility of parole for the offenses committed in this case. The Court specified that the lengthy sentence in this case ignores the developing line of cases that limit lengthy juvenile prison sentences because juveniles have less culpability than an adult and have a greater potential for rehabilitation.

The Court thus vacated the decisions of the Court of Appeals and the district court and remanded the case to the district court for application of the *Miller v. Alabama* principles.

Concurring Opinion. Justice Cady concurred with the majority opinion but wrote separately to emphasize that the

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(Legal Update—Cruel and Unusual Punishment—Juvenile Offenders continued from Page 8)

opinion issued in this case should not be applicable only when sentencing a juvenile for a serious offense but also for a minor offense too. Justice Cady further emphasized that recent advances in neuroscience have illustrated the decreased culpability of juvenile offenders and taking this decreased culpability into account is the right thing to do.

Dissent. The dissent acknowledged the sentence in this case is a harsh sentence. However, the dissent argued that the severity of the sentence is the result of the General Assembly's decision to require a person who commits robbery or burglary in the first degree to serve 70 percent of a 25-year-sentence prior to becoming eligible for parole and the district court's desire to run the sentences consecutively rather than concurrently. The dissent further argued that the sentence in this case does not violate the principles of *Miller v. Alabama* because this case does not involve a life sentence nor is the sentence so "grossly disproportionate" as to render it cruel and unusual punishment and a violation of the 8th Amendment to the United States Constitution and Article I, section 17 of the Iowa Constitution.

LSA Monitor: Joe McEniry, Legal Services, (515) 281-3189.